

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 3
94TH GENERAL ASSEMBLY

Reported from the Committee on Health and Mental Health, February 22, 2007, with recommendation that the Senate Committee Substitute do pass.

0580S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 565.184, 630.005, 630.165, 630.167, 630.725, and 630.755, RSMo, and to enact in lieu thereof eighteen new sections relating to mental health, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 565.184, 630.005, 630.165, 630.167, 630.725, and 630.755, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 198.075, 565.184, 565.210, 565.212, 565.214, 565.216, 565.218, 565.220, 630.005, 630.163, 630.165, 630.167, 630.725, 630.755, 630.925, 630.927, 630.950, and 630.975, to read as follows:

198.075. 1. By December 1, 2010, all residential care facilities and assisted living facilities licensed by the department of health and senior services shall have in place sprinklers, heat rise detectors, and smoke alarms. As part of licensure, such facilities shall be annually inspected by the division of fire safety within the department of public safety for testing and maintenance of the sprinklers, heat rise detectors, and smoke alarm systems. Reports of the inspections shall be forwarded to the department of health and senior services.

2. The department of health and senior services shall promulgate rules for the implementation of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 **chapter 536, RSMo, are nonseverable and if any of the powers vested**
16 **with the general assembly pursuant to chapter 536, RSMo, to review, to**
17 **delay the effective date, or to disapprove and annul a rule are**
18 **subsequently held unconstitutional, then the grant of rulemaking**
19 **authority and any rule proposed or adopted after August 28, 2007, shall**
20 **be invalid and void.**

565.184. 1. A person commits the crime of elder abuse in the third degree
2 if he:

3 (1) Knowingly causes or attempts to cause physical contact with any
4 person sixty years of age or older or an eligible adult as defined in section
5 660.250, RSMo, knowing the other person will regard the contact as harmful or
6 provocative; or

7 (2) Purposely engages in conduct involving more than one incident that
8 causes grave emotional distress to a person sixty years of age or older or an
9 eligible adult, as defined in section 660.250, RSMo. The course of conduct shall
10 be such as would cause a reasonable person age sixty years of age or older or an
11 eligible adult, as defined in section 660.250, RSMo, to suffer substantial
12 emotional distress; or

13 (3) Purposely or knowingly places a person sixty years of age or older or
14 an eligible adult, as defined in section 660.250, RSMo, in apprehension of
15 immediate physical injury; or

16 (4) Intentionally fails to provide care, goods or services to a person sixty
17 years of age or older or an eligible adult, as defined in section 660.250,
18 RSMo. The [cause] **result** of the conduct shall be such as would cause a
19 reasonable person age sixty or older or an eligible adult, as defined in section
20 660.250, RSMo, to suffer physical or emotional distress; or

21 (5) Knowingly acts or knowingly fails to act in a manner which results in
22 a grave risk to the life, body or health of a person sixty years of age or older or
23 an eligible adult, as defined in section 660.250, RSMo.

24 2. Elder abuse in the third degree is a class A misdemeanor.

565.210. 1. A person commits the crime of vulnerable person
2 **abuse in the first degree if he or she attempts to kill or knowingly**
3 **causes or attempts to cause serious physical injury to, a vulnerable**
4 **person, as defined in section 630.005, RSMo.**

5 **2. Vulnerable person abuse in the first degree is a class A felony.**

565.212. 1. A person commits the crime of vulnerable person

2 abuse in the second degree if he or she:

3 (1) Knowingly causes or attempts to cause physical injury to a
4 vulnerable person, as defined in section 630.005, RSMo, by means of a
5 deadly weapon or dangerous instrument; or

6 (2) Recklessly causes serious physical injury to any vulnerable
7 person, as defined in section 630.005, RSMo.

8 2. Vulnerable person abuse in the second degree is a class B
9 felony.

565.214. 1. A person commits the crime of vulnerable person
2 abuse in the third degree if he or she:

3 (1) Knowingly causes or attempts to cause physical contact with
4 any vulnerable person as defined in section 630.005, RSMo, knowing
5 the other person will regard the contact as harmful or provocative; or

6 (2) Purposely engages in conduct involving more than one
7 incident that causes grave emotional distress to a vulnerable person,
8 as defined in section 630.005, RSMo. The result of the conduct shall be
9 such as would cause a reasonable vulnerable person, as defined in
10 section 630.005, RSMo, to suffer substantial emotional distress; or

11 (3) Purposely or knowingly places a vulnerable person, as
12 defined in section 630.005, RSMo, in apprehension of immediate
13 physical injury; or

14 (4) Intentionally fails to provide care, goods or services to a
15 vulnerable person, as defined in section 630.005, RSMo. The cause of
16 the conduct shall be such as would cause a reasonable vulnerable
17 person, as defined in section 630.005, RSMo, to suffer physical or
18 emotional distress; or

19 (5) Knowingly acts or knowingly fails to act in a manner that
20 results in a grave risk to the life, body or health of a vulnerable person,
21 as defined in section 630.005, RSMo.

22 2. Vulnerable person abuse in the third degree is a class A
23 misdemeanor.

24 3. Actions done in good faith and without gross negligence that
25 are designed to protect the safety of the individual and the safety of
26 others, or are provided within accepted standards of care and
27 treatment, shall not be considered as abuse of a vulnerable person as
28 defined in this section.

565.216. The department of mental health shall investigate incidents and reports of vulnerable person abuse using the procedures established in sections 630.163 to 630.167, RSMo, and, upon substantiation of the report of vulnerable person abuse, shall promptly report the incident to the appropriate law enforcement agency and prosecutor. If the department is unable to substantiate whether abuse occurred due to the failure of the operator or any of the operator's agents or employees to cooperate with the investigation, the incident shall be promptly reported to appropriate law enforcement agencies.

565.218. 1. When any physician, physician assistant, dentist, chiropractor, optometrist, podiatrist, intern, resident, nurse, nurse practitioner, medical examiner, social worker, licensed professional counselor, certified substance abuse counselor, psychologist, physical therapist, pharmacist, other health practitioner, minister, Christian Science practitioner, facility administrator, nurse's aide or orderly in a residential facility, day program or specialized service operated, funded or licensed by the department or in a mental health facility or mental health program in which people may be admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo; or employee of the departments of social services, mental health, or health and senior services; or home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; mental health professional; peace officer; probation or parole officer; or other non-familial person with responsibility for the care of a vulnerable person, as defined by section 630.005, RSMo, has reasonable cause to suspect that such a person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances that would reasonably result in abuse or neglect, he or she shall immediately report or cause a report to be made to the department in accordance with section 630.163, RSMo. Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.

2. Any person who knowingly fails to make a report as required

28 in subsection 1 of this section is guilty of a class A misdemeanor and
29 shall be subject to a fine up to one thousand dollars. Penalties
30 collected for violations of this section shall be transferred to the state
31 school moneys fund as established in section 166.051, RSMo, and
32 distributed to the public schools of this state in the manner provided
33 in section 163.031, RSMo. Such penalties shall not be considered
34 charitable for tax purposes.

35 3. Every person who has been previously convicted of or pled
36 guilty to failing to make a report as required in subsection 1 of this
37 section and who is subsequently convicted of failing to make a report
38 under subsection 2 of this section is guilty of a class D felony and shall
39 be subject to a fine up to five thousand dollars. Penalties collected for
40 violation of this subsection shall be transferred to the state school
41 moneys fund as established in section 166.051, RSMo, and distributed
42 to the public schools of this state in the manner provided in section
43 163.031, RSMo. Such penalties shall not be considered charitable for
44 tax purposes.

45 4. Any person who knowingly files a false report of vulnerable
46 person abuse or neglect is guilty of a class A misdemeanor and shall be
47 subject to a fine up to one thousand dollars. Penalties collected for
48 violations of this subsection shall be transferred to the state school
49 moneys fund as established in section 166.051, RSMo, and distributed
50 to the public schools of this state in the manner provided in section
51 163.031, RSMo. Such penalties shall not be considered charitable for
52 tax purposes.

53 5. Every person who has been previously convicted of or pled
54 guilty to making a false report to the department and who is
55 subsequently convicted of making a false report under subsection 4 of
56 this section is guilty of a class D felony and shall be subject to a fine up
57 to five thousand dollars. Penalties collected for violations of this
58 subsection shall be transferred to the state school moneys fund as
59 established in section 166.051, RSMo, and distributed to the public
60 schools of this state in the manner provided in section 163.031,
61 RSMo. Such penalties shall not be considered charitable for tax
62 purposes.

63 6. Evidence of prior convictions of false reporting shall be heard

64 by the court, out of the hearing of the jury, prior to the submission of
65 the case to the jury, and the court shall determine the existence of the
66 prior convictions.

67 7. Any residential facility, day program or specialized service
68 operated, funded or licensed by the department that prevents or
69 discourages a patient, resident or client, employee or other person from
70 reporting that a patient, resident or client of a facility, program or
71 service has been abused or neglected shall be subject to loss of their
72 license issued pursuant to sections 630.705 to 630.760, and civil fines of
73 up to five thousand dollars for each attempt to prevent or discourage
74 reporting.

565.220. Any person, official or institution complying with the
2 provisions of section 565.218, in the making of a report, or in
3 cooperating with the department in any of its activities pursuant to
4 sections 565.216 and 565.218, except any person, official, or institution
5 violating section 565.210, 565.212, or 565.214 shall be immune from any
6 civil or criminal liability for making such a report, or in cooperating
7 with the department, unless such person acted negligently, recklessly,
8 in bad faith, or with malicious purpose.

630.005. As used in this chapter and chapters 631, 632, and 633, RSMo,
2 unless the context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than
4 transportation to clients of the department on behalf of a division of the
5 department;

6 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results
7 in intoxication or in a psychological or physiological dependency from continued
8 use, which dependency induces a mental, emotional or physical impairment and
9 which causes socially dysfunctional behavior;

10 (3) "Chemical restraint", medication administered with the primary intent
11 of restraining a patient who presents a likelihood of serious physical injury to
12 himself or others, and not prescribed to treat a person's medical condition;

13 (4) "Client", any person who is placed by the department in a facility or
14 program licensed and funded by the department or who is a recipient of services
15 from a regional center, as defined in section 633.005, RSMo;

16 (5) "Commission", the state mental health commission;

17 (6) "Consumer", a person:

- 18 (a) Who qualifies to receive department services; or
- 19 (b) Who is a parent, child or sibling of a person who receives department
- 20 services; or
- 21 (c) Who has a personal interest in services provided by the department. A
- 22 person who provides services to persons affected by mental retardation,
- 23 developmental disabilities, mental disorders, mental illness, or alcohol or drug
- 24 abuse shall not be considered a consumer;
- 25 (7) "Day program", a place conducted or maintained by any person who
- 26 advertises or holds himself out as providing prevention, evaluation, treatment,
- 27 habilitation or rehabilitation for persons affected by mental disorders, mental
- 28 illness, mental retardation, developmental disabilities or alcohol or drug abuse
- 29 for less than the full twenty-four hours comprising each daily period;
- 30 (8) "Department", the department of mental health of the state of
- 31 Missouri;
- 32 (9) "Developmental disability", a disability:
- 33 (a) Which is attributable to:
- 34 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or
- 35 a learning disability related to a brain dysfunction; or
- 36 b. Any other mental or physical impairment or combination of mental or
- 37 physical impairments; and
- 38 (b) Is manifested before the person attains age twenty-two; and
- 39 (c) Is likely to continue indefinitely; and
- 40 (d) Results in substantial functional limitations in two or more of the
- 41 following areas of major life activities:
- 42 a. Self-care;
- 43 b. Receptive and expressive language development and use;
- 44 c. Learning;
- 45 d. Self-direction;
- 46 e. Capacity for independent living or economic self-sufficiency;
- 47 f. Mobility; and
- 48 (e) Reflects the person's need for a combination and sequence of special,
- 49 interdisciplinary, or generic care, habilitation or other services which may be of
- 50 lifelong or extended duration and are individually planned and coordinated;
- 51 (10) "Director", the director of the department of mental health, or his
- 52 designee;

53 (11) "Domiciled in Missouri", a permanent connection between an
54 individual and the state of Missouri, which is more than mere residence in the
55 state; it may be established by the individual being physically present in Missouri
56 with the intention to abandon his previous domicile and to remain in Missouri
57 permanently or indefinitely;

58 (12) "Drug abuse", the use of any drug without compelling medical reason,
59 which use results in a temporary mental, emotional or physical impairment and
60 causes socially dysfunctional behavior, or in psychological or physiological
61 dependency resulting from continued use, which dependency induces a mental,
62 emotional or physical impairment and causes socially dysfunctional behavior;

63 (13) "Habilitation", a process of treatment, training, care or specialized
64 attention which seeks to enhance and maximize the mentally retarded or
65 developmentally disabled person's abilities to cope with the environment and to
66 live as normally as possible;

67 (14) "Habilitation center", a residential facility operated by the
68 department and serving only persons who are mentally retarded, including
69 developmentally disabled;

70 (15) "Head of the facility", the chief administrative officer, or his designee,
71 of any residential facility;

72 (16) "Head of the program", the chief administrative officer, or his
73 designee, of any day program;

74 (17) "Individualized habilitation plan", a document which sets forth
75 habilitation goals and objectives for mentally retarded or developmentally
76 disabled residents and clients, and which details the habilitation program as
77 required by law, rules and funding sources;

78 (18) "Individualized rehabilitation plan", a document which sets forth the
79 care, treatment and rehabilitation goals and objectives for patients and clients
80 affected by alcohol or drug abuse, and which details the rehabilitation program
81 as required by law, rules and funding sources;

82 (19) "Individualized treatment plan", a document which sets forth the
83 care, treatment and rehabilitation goals and objectives for mentally disordered
84 or mentally ill patients and clients, and which details the treatment program as
85 required by law, rules and funding sources;

86 (20) "Investigator", an employee or contract agent of the department of
87 mental health who is performing an investigation regarding an allegation of

88 abuse or neglect or an investigation at the request of the director of the
89 department of mental health or his designee;

90 (21) "Least restrictive environment", a reasonably available setting or
91 mental health program where care, treatment, habilitation or rehabilitation is
92 particularly suited to the level and quality of services necessary to implement a
93 person's individualized treatment, habilitation or rehabilitation plan and to
94 enable the person to maximize his functioning potential to participate as freely
95 as feasible in normal living activities, giving due consideration to potentially
96 harmful effects on the person and the safety of other facility or program clients
97 and public safety. For some mentally disordered or mentally retarded persons,
98 the least restrictive environment may be a facility operated by the department,
99 a private facility, a supported community living situation, or an alternative
100 community program designed for persons who are civilly detained for outpatient
101 treatment or who are conditionally released pursuant to chapter 632, RSMo;

102 (22) "Mental disorder", any organic, mental or emotional impairment
103 which has substantial adverse effects on a person's cognitive, volitional or
104 emotional function and which constitutes a substantial impairment in a person's
105 ability to participate in activities of normal living;

106 (23) "Mental illness", a state of impaired mental processes, which
107 impairment results in a distortion of a person's capacity to recognize reality due
108 to hallucinations, delusions, faulty perceptions or alterations of mood, and
109 interferes with an individual's ability to reason, understand or exercise conscious
110 control over his actions. The term "mental illness" does not include the following
111 conditions unless they are accompanied by a mental illness as otherwise defined
112 in this subdivision:

113 (a) Mental retardation, developmental disability or narcolepsy;

114 (b) Simple intoxication caused by substances such as alcohol or drugs;

115 (c) Dependence upon or addiction to any substances such as alcohol or
116 drugs;

117 (d) Any other disorders such as senility, which are not of an actively
118 psychotic nature;

119 (24) "Mental retardation", significantly subaverage general intellectual
120 functioning which:

121 (a) Originates before age eighteen; and

122 (b) Is associated with a significant impairment in adaptive behavior;

- 123 (25) "Minor", any person under the age of eighteen years;
- 124 (26) "Patient", an individual under observation, care, treatment or
125 rehabilitation by any hospital or other mental health facility or mental health
126 program pursuant to the provisions of chapter 632, RSMo;
- 127 (27) "Psychosurgery",
- 128 (a) Surgery on the normal brain tissue of an individual not suffering from
129 physical disease for the purpose of changing or controlling behavior; or
- 130 (b) Surgery on diseased brain tissue of an individual if the sole object of
131 the surgery is to control, change or affect behavioral disturbances, except seizure
132 disorders;
- 133 (28) "Rehabilitation", a process of restoration of a person's ability to attain
134 or maintain normal or optimum health or constructive activity through care,
135 treatment, training, counseling or specialized attention;
- 136 (29) "Residence", the place where the patient has last generally lodged
137 prior to admission or, in case of a minor, where his family has so lodged; except,
138 that admission or detention in any facility of the department shall not be deemed
139 an absence from the place of residence and shall not constitute a change in
140 residence;
- 141 (30) "Resident", a person receiving residential services from a facility,
142 other than mental health facility, operated, funded or licensed by the department;
- 143 (31) "Residential facility", any premises where residential prevention,
144 evaluation, care, treatment, habilitation or rehabilitation is provided for persons
145 affected by mental disorders, mental illness, mental retardation, developmental
146 disabilities or alcohol or drug abuse; except the person's dwelling;
- 147 (32) "Specialized service", an entity which provides prevention, evaluation,
148 transportation, care, treatment, habilitation or rehabilitation services to persons
149 affected by mental disorders, mental illness, mental retardation, developmental
150 disabilities or alcohol or drug abuse;
- 151 (33) "Vendor", a person or entity under contract with the department,
152 other than as a department employee, who provides services to patients, residents
153 or clients;
- 154 (34) "Vulnerable person", any person in the custody, care, or
155 control of the department that is receiving services from an operated,
156 funded, licensed, or certified program.

630.163. 1. Any person having reasonable cause to suspect that

2 a vulnerable person presents a likelihood of suffering serious physical
3 harm or is the victim of abuse or neglect shall report such information
4 to the department. Reports of vulnerable person abuse received by the
5 departments of health and senior services and social services shall be
6 forwarded to the department.

7 2. The report shall be made orally or in writing. It shall include,
8 if known:

9 (1) The name, age, and address of the vulnerable person;

10 (2) The name and address of any person responsible for the
11 vulnerable person's care;

12 (3) The nature and extent of the vulnerable person's condition;
13 and

14 (4) Other relevant information.

15 3. The department shall have primary responsibility for
16 investigating reported incidents of abuse and neglect of vulnerable
17 persons.

18 4. Reports regarding persons determined not to be vulnerable
19 persons as defined in section 630.005 shall be referred to the
20 appropriate state or local authorities.

21 5. The department shall collaborate with the departments of
22 health and senior services and social services to maintain a statewide
23 toll free phone number for receipt of reports.

630.165. 1. When any physician, dentist, chiropractor, optometrist,
2 podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,
3 Christian Science practitioner, peace officer, pharmacist, physical therapist,
4 facility administrator, nurse's aide or orderly in a residential facility, day
5 program or specialized service operated, funded or licensed by the department or
6 in a mental health facility or mental health program in which people may be
7 admitted on a voluntary basis or are civilly detained pursuant to chapter 632,
8 RSMo, or employee of the department has reasonable cause to believe that a
9 patient, resident or client of a facility, program or service has been abused or
10 neglected, he or she shall immediately report or cause a report to be made to the
11 department or the department of health and senior services, if such facility or
12 program is licensed pursuant to chapter 197, RSMo.

13 2. The report shall contain the name and address of the residential
14 facility, day program or specialized service; the name of the patient, resident or

15 client; information regarding the nature of the abuse or neglect; the name of the
16 complainant, and any other information which might be helpful in an
17 investigation.

18 3. Any person required in subsection 1 of this section to report or cause
19 a report to be made to the department who fails to do so within a reasonable time
20 after the act of abuse or neglect is guilty of [an infraction] **a class A**
21 **misdemeanor and may be subject to a five hundred dollar fine.**

22 4. In addition to those persons required to report under subsection 1 of
23 this section, any other person having reasonable cause to believe that a resident
24 has been abused or neglected may report such information to the department.

25 5. Any person who knowingly files a false report of abuse or neglect is
26 guilty of a class A misdemeanor.

27 6. Any person having a prior conviction of filing false reports and who
28 subsequently files a false report of abuse or neglect pursuant to this section or
29 section 565.188, RSMo, is guilty of a class D felony.

30 **7. Any residential facility, day program, or specialized service**
31 **operated, funded, or licensed by the department that prevents or**
32 **discourages a patient, resident, or client, employee, or other person**
33 **from reporting that a patient, resident, or client of a facility, program,**
34 **or service has been abused or neglected shall be subject to loss of their**
35 **license issued pursuant to sections 630.705 to 630.760 and civil fines of**
36 **up to five thousand dollars for each attempt to prevent or discourage**
37 **reporting.**

630.167. 1. Upon receipt of a report, the department or its agents,
2 contractors or vendors or the department of health and senior services, if such
3 facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an
4 investigation within twenty-four hours.

5 2. If the investigation indicates possible abuse or neglect of a patient,
6 resident or client, the investigator shall refer the complaint together with the
7 investigator's report to the department director for appropriate action. If, during
8 the investigation or at its completion, the department has reasonable cause to
9 believe that immediate removal from a facility not operated or funded by the
10 department is necessary to protect the residents from abuse or neglect, the
11 department or the local prosecuting attorney may, or the attorney general upon
12 request of the department shall, file a petition for temporary care and protection

13 of the residents in a circuit court of competent jurisdiction. The circuit court in
14 which the petition is filed shall have equitable jurisdiction to issue an ex parte
15 order granting the department authority for the temporary care and protection
16 of the resident for a period not to exceed thirty days.

17 3. (1) **Except as otherwise provided in this section**, reports referred
18 to in section 630.165 and the investigative reports referred to in this section shall
19 be confidential, shall not be deemed a public record, and shall not be subject to
20 the provisions of section 109.180, RSMo, or chapter 610, RSMo[; except that
21 complete copies of all such reports shall be open and available]. **Investigative**
22 **reports pertaining to abuse and neglect shall remain confidential until**
23 **a final report is complete, subject to the conditions contained in this**
24 **section. Final reports of substantiated abuse or neglect are open and**
25 **shall be available for release in accordance with chapter 610,**
26 **RSMo. The names and all other identifying information in such final**
27 **substantiated reports, including diagnosis and treatment information**
28 **about the patient, resident, or client who is the subject of such report,**
29 **shall be confidential and may only be released to the parent or other**
30 **guardian of the patient, resident, or client. The names and other**
31 **descriptive information of the complainant, witnesses, or other persons**
32 **for whom findings are not made against in the final substantiated**
33 **report shall be confidential and not deemed a public record. Final**
34 **reports of unsubstantiated allegations of abuse and neglect shall**
35 **remain closed records and shall only be released** to the parents or other
36 guardian of the patient, resident, or client who is the subject of such report, but
37 the names and any other descriptive information of the complainant or **any** other
38 person mentioned in the reports shall not be disclosed unless such complainant
39 or person specifically consents to such disclosure. All reports referred to in this
40 section shall be admissible in any judicial proceedings or hearing in accordance
41 with section 36.390, RSMo, or any administrative hearing before the director of
42 the department of mental health, or the director's designee. All such reports may
43 be disclosed by the department of mental health to law enforcement officers and
44 public health officers, but only to the extent necessary to carry out the
45 responsibilities of their offices, and to the department of social services, and the
46 department of health and senior services, and to boards appointed pursuant to
47 sections 205.968 to 205.990, RSMo, that are providing services to the patient,
48 resident or client as necessary to report or have investigated abuse, neglect, or

49 rights violations of patients, residents or clients provided that all such law
50 enforcement officers, public health officers, department of social services' officers,
51 department of health and senior services' officers, and boards shall be obligated
52 to keep such information confidential;

53 (2) Except as otherwise provided in this section, the proceedings, findings,
54 deliberations, reports and minutes of committees of health care professionals as
55 defined in section 537.035, RSMo, or mental health professionals as defined in
56 section 632.005, RSMo, who have the responsibility to evaluate, maintain, or
57 monitor the quality and utilization of mental health services are privileged and
58 shall not be subject to the discovery, subpoena or other means of legal compulsion
59 for their release to any person or entity or be admissible into evidence into any
60 judicial or administrative action for failure to provide adequate or appropriate
61 care. Such committees may exist, either within department facilities or its
62 agents, contractors, or vendors, as applicable. Except as otherwise provided in
63 this section, no person who was in attendance at any investigation or committee
64 proceeding shall be permitted or required to disclose any information acquired in
65 connection with or in the course of such proceeding or to disclose any opinion,
66 recommendation or evaluation of the committee or board or any member thereof;
67 provided, however, that information otherwise discoverable or admissible from
68 original sources is not to be construed as immune from discovery or use in any
69 proceeding merely because it was presented during proceedings before any
70 committee or in the course of any investigation, nor is any member, employee or
71 agent of such committee or other person appearing before it to be prevented from
72 testifying as to matters within their personal knowledge and in accordance with
73 the other provisions of this section, but such witness cannot be questioned about
74 the testimony or other proceedings before any investigation or before any
75 committee;

76 (3) Nothing in this section shall limit authority otherwise provided by law
77 of a health care licensing board of the state of Missouri to obtain information by
78 subpoena or other authorized process from investigation committees or to require
79 disclosure of otherwise confidential information relating to matters and
80 investigations within the jurisdiction of such health care licensing boards;
81 provided, however, that such information, once obtained by such board and
82 associated persons, shall be governed in accordance with the provisions of this
83 subsection;

84 (4) Nothing in this section shall limit authority otherwise provided by law
85 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to
86 records by the entity or agency authorized to implement a system to protect and
87 advocate the rights of persons with developmental disabilities under the
88 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
89 authorized to implement a system to protect and advocate the rights of persons
90 with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing
91 in this section shall serve to negate assurances that have been given by the
92 governor of Missouri to the U.S. Administration on Developmental Disabilities,
93 Office of Human Development Services, Department of Health and Human
94 Services concerning access to records by the agency designated as the protection
95 and advocacy system for the state of Missouri. However, such information, once
96 obtained by such entity or agency, shall be governed in accordance with the
97 provisions of this subsection.

98 4. Anyone who makes a report pursuant to this section or who testifies in
99 any administrative or judicial proceeding arising from the report shall be immune
100 from any civil liability for making such a report or for testifying unless such
101 person acted in bad faith or with malicious purpose.

102 5. Within five working days after a report required to be made pursuant
103 to this section is received, the person making the report shall be notified in
104 writing of its receipt and of the initiation of the investigation.

105 6. No person who directs or exercises any authority in a residential
106 facility, day program or specialized service shall evict, harass, dismiss or retaliate
107 against a patient, resident or client or employee because he or she or any member
108 of his or her family has made a report of any violation or suspected violation of
109 laws, ordinances or regulations applying to the facility which he or she has
110 reasonable cause to believe has been committed or has occurred.

111 7. Any person who is discharged as a result of an administrative
112 substantiation of allegations contained in a report of abuse or neglect may, after
113 exhausting administrative remedies as provided in chapter 36, RSMo, appeal such
114 decision to the circuit court of the county in which such person resides within
115 ninety days of such final administrative decision. The court may accept an
116 appeal up to twenty-four months after the party filing the appeal received notice
117 of the department's determination, upon a showing that:

118 (1) Good cause exists for the untimely commencement of the request for

119 the review;

120 (2) If the opportunity to appeal is not granted it will adversely affect the
121 party's opportunity for employment; and

122 (3) There is no other adequate remedy at law.

630.725. 1. The department shall revoke a license or deny an application
2 for a license in any case in which it finds a substantial failure to comply with the
3 standards established under its rules or the requirements established under
4 sections 630.705 to 630.760.

5 2. Any person aggrieved by the action of the department to deny or revoke
6 a license under the provisions of sections 630.705 to 630.760 may seek a
7 determination of the department director's decision by the administrative hearing
8 commission pursuant to the provisions of section 621.045, RSMo. It shall not be
9 a condition to such determination that the person aggrieved seek a
10 reconsideration, a rehearing or exhaust any other procedure within the
11 department.

12 3. The administrative hearing commission may stay the revocation of such
13 license, pending the commission's finding and determination in the cause, upon
14 such conditions as the commission deems necessary and appropriate including the
15 posting of bond or other security except that the commission shall not grant a
16 stay or if a stay has already been entered shall set aside its stay, if upon
17 application of the department the commission finds reason to believe that
18 continued operation of a residential facility or day program pending the
19 commission's final determination would present an imminent danger to the
20 health, safety or welfare of any resident or a substantial probability that death
21 or serious physical harm would result. In any case in which the department has
22 refused to issue a license, the commission shall have no authority to stay or to
23 require the issuance of a license pending final determination by the commission.

24 4. The administrative hearing commission shall make the final decision
25 as to the issuance or revocation of a license. Any person aggrieved by a final
26 decision of the administrative hearing commission, including the department,
27 may seek judicial review of such decision by filing a petition for review in the
28 court of appeals for the district in which the facility or program is
29 located. Review shall be had, except as modified herein, in accordance with the
30 provisions of sections 621.189 and 621.193, RSMo.

31 5. The department of mental health shall notify the department

32 of health and senior services within ten days of revoking a license
33 under this section. If the department of health and senior services has
34 not already done so, the department of health and senior services shall
35 within thirty days of notification from the department of mental health,
36 initiate an investigation of the facility to determine whether licensure
37 action under sections 198.022 or 198.036, RSMo, is appropriate.

630.755. 1. An action may be brought by the department, or by the
2 attorney general on his own volition or at the request of the department or any
3 other appropriate state agency, to temporarily or permanently enjoin or restrain
4 any violation of sections 630.705 to 630.760, to enjoin the acceptance of new
5 residents until substantial compliance with sections 630.705 to 630.760 is
6 achieved, or to enjoin any specific action or practice of the residential facility or
7 day program. Any action brought under the provisions of this section shall be
8 placed at the head of the docket by the court and the court shall hold a hearing
9 on any action brought under the provisions of this section no less than fifteen
10 days after the filing of the action.

11 2. Any facility or program which has received a notice of noncompliance
12 as provided by sections 630.745 to 630.750 is liable to the state for civil penalties
13 of up to [one hundred] **ten thousand** dollars for each day that noncompliance
14 continues after the notice of noncompliance is received. The attorney general
15 shall, upon the request of the department, bring an action in a circuit court of
16 competent jurisdiction to recover the civil penalty. The court shall have the
17 authority to determine the amount of civil penalty to be assessed **within the**
18 **limits set out in this section. Appeals may be taken from the judgment**
19 **of the circuit court as in other civil cases.**

20 3. The imposition of any remedy provided for in sections 630.705
21 to 630.760 shall not bar the imposition of any other remedy.

22 4. Penalties collected for violations of this section shall be
23 transferred to the state schools moneys established under section
24 166.051, RSMo. Such penalties shall not be considered a charitable
25 contribution for tax purposes.

26 5. To recover any civil penalty, the moving party shall prove by
27 a preponderance of the evidence that the violation occurred.

630.925. 1. The director of the department shall establish a
2 mental health fatality review panel to review deaths of all adults in the
3 care and custody of the department. The panel shall be formed and

4 shall operate according to the rules, guidelines, and protocols provided
5 by the department of mental health.

6 2. The panel shall include, but shall not be limited to, the
7 following:

8 (1) A prosecuting or circuit attorney;

9 (2) A coroner or medical examiner;

10 (3) Law enforcement personnel;

11 (4) A representative from the departments of mental health,
12 social services, health and senior services, and public safety;

13 (5) A representative of the Missouri Protection and Advocacy.

14 3. The director of the department of mental health shall organize
15 the panel and shall call the first organizational meeting of the
16 panel. The panel shall elect a chairman who shall convene the panel to
17 meet at least quarterly to review all suspicious deaths of patients,
18 residents, or clients who are in the care and custody of the department
19 of mental health, which meet guidelines for review as set forth by the
20 department of mental health. In addition, the panel may review at its
21 own discretion any death reported to it by the medical examiner,
22 coroner, or a parent or legal representative of a client in the care and
23 custody of the department, even if it does not meet criteria for review
24 as set forth by the department. The panel shall issue a final report,
25 which shall be a public record, of each investigation to the department
26 of mental health. The final report shall include a completed summary
27 report form. The form shall be developed by the director of the
28 department of mental health. The department of mental health shall
29 analyze the mental health fatality review panel reports and periodically
30 prepare epidemiological reports which describe the incidence, causes,
31 location, and other factors. The department of mental health shall
32 make recommendations and develop programs to prevent patient,
33 resident, or client injuries and deaths.

34 4. For purposes of this section, "suspicious death" shall include
35 but not be limited to when the following occurs:

36 (1) A crime is involved;

37 (2) An accident has occurred;

38 (3) A medical prognosis has not been ascertained; or

39 (4) A person has died unexpectedly.

40 5. The mental health fatality review panel shall enjoy such
41 official immunity as exists at common law.

 630.927. 1. The director of the department of mental health shall
2 promulgate rules, guidelines, and protocols for the mental health
3 fatality review panel established pursuant to section 630.925.

4 2. The director shall promulgate guidelines and protocols for
5 coroner and medical examiners to use to help them to identify
6 suspicious deaths of patients, residents, or clients in the care and
7 custody of the department of mental health.

8 3. Any rule or portion of a rule, as that term is defined in section
9 536.010, RSMo, that is created under the authority delegated in this
10 section shall become effective only if it complies with and is subject to
11 all of the provisions of chapter 536, RSMo, and, if applicable, section
12 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
13 and if any of the powers vested with the general assembly pursuant to
14 chapter 536, RSMo, to review, to delay the effective date, or to
15 disapprove and annul a rule are subsequently held unconstitutional,
16 then the grant of rulemaking authority and any rule proposed or
17 adopted after August 28, 2007, shall be invalid and void.

18 4. All meetings conducted, all reports and records made and
19 maintained pursuant to sections 630.925 and 630.927 by the department
20 of mental health, or other appropriate persons, officials, or state mental
21 health fatality review panel shall be confidential and shall not be open
22 to the general public except for the annual report pursuant to section
23 630.925.

 630.950. Any department employee or employee of a residential
2 facility, day program, or specialized service operated, funded, or
3 licensed by the department who reports on or discusses employee job
4 performance for the purposes of making employment decisions that
5 affect the safety of consumers and who does so in good faith and
6 without malice shall not be subject to an action for civil damages as a
7 result thereof, and no cause of action shall arise against him or her as
8 a result of his or her conduct pursuant to this section. The attorney
9 general shall defend such persons in any such action or proceeding.

 630.975. 1. The director of the department of mental health shall
2 promulgate rules, guidelines and protocols for hospitals and physicians

3 to use to help them to identify suspicious deaths of patients, residents,
4 or clients in the care and custody of the department of mental health.
5 2. Any hospital, physician, medical professional, mental health
6 professional, or department of mental health facility shall disclose upon
7 request all records, medical or social, of any client in the care and
8 custody of the department of mental health who has died to the mental
9 health fatality review panel established under section 630.925 to
10 investigate the person's death. Any legally recognized privileged
11 communication, except that between attorney and client, shall not
12 apply to situations involving the death of a client in the care and
13 custody of the department of mental health.

✓

Bill

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